

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

MFA.No. 1582 of 2001(D)

**O.P(MV).NO.519/1996 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
DATED 20/08/2001.**

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APPELLANTS/PETITIONER IN O.P. (MV):

1. **MARIAM, W/O. LATE KORATH,
THAYYIL HOUSE,
KUTHIATHODE.P.O.,
PARUR TALUK,
ERNAKULAM DISTRICT.**
2. **JOSE, S/O. LATE KORATH,
THAYYIL HOUSE,
KUTHIATHODE.P.O.,
PARUR TALUK,
ERNAKULAM DISTRICT.**
3. **MARTIN, S/O. KORATH,
THAYYIL HOUSE,
KUTHIATHODE.P.O.,
PARUR TALUK, ERNAKULAM DISTRICT.**
4. **ROSILY, D/O. LATE KORATH,
THAYYIL HOUSE,
KUTHIATHODE.P.O.,
PARUR TALUK, ERNAKULAM DISTRICT.**
5. **ANTOO, S/O. LATE KORATH,
THAYYIL HOUSE,
KUTHIATHODE.P.O.,
PARUR TALUK, ERNAKULAM DISTRICT.**

**BY ADV. SRI.P.V.BABY,
SRI.A.N.SANTHOSH.**

M.F.A. NO. 1582/2001:

RESPONDENTS/RESPONDENTS IN O.P. (MV):

1. **MANAGING DIRECTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
FORT, TRIVANDRUM.**
2. **CHATHUKUTTY, S/O. RAMAN,
EZHAMPARAMBIL HOUSE,
CHIRACKAL.P.O.,
THRISSUR DISTRICT.**

BY ADV. SRI.JOHNSON P.JOHN, SC, KSRTC.

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 06/07/2007,THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

J.B. KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No. 1582 of 2001

Dated this the 6th day of July, 2007

Judgment

Koshy, J.

Appellants are the mother, three brothers and sister of a 26 year old motor accident victim who died while driving tempo van when the bus owned by the first respondent hit the same. Even though claimant filed a petition under section 163-A of the Motor Vehicles Act, tribunal found that the accident occurred due to the negligence of the second respondent driver of the bus owned by the first respondent. Against a claim of Rs.4,12,500/-, only Rs.80,200/- was awarded by the tribunal. According to the appellants, the deceased was the only earning member at the time of accident. Mother was a widow. Only quantum of compensation is disputed in this appeal.

2. According to the appellants, deceased was getting Rs.3,000/- per month, but, tribunal took only Rs.1,500/- per month. Deceased was a professional driver. Accident occurred while driving a vehicle. Accident occurred in 1996. Considering the monthly income that was earning by a professional driver in 1996

in Kerala, at least Rs.2,000/- ought to have been taken as monthly income. Tribunal has taken 8 as the multiplier taking the age of the mother. It is true that if compensation is to be calculated under section 166, age of the mother ought to have been taken. Since it is a claim under section 163-A, age of the deceased alone need be considered and compensation has to be calculated strictly according to second schedule. Courts and tribunals are not allowed to deviate from the statutory formula in a claim under section 163-A.

3. In Jacob and others v. K.T.Mohammed and others (2004 (2) ILR Kerala 437) at paragraph 4, this court held as follows:

"4. The claim was filed under section 163 (A) of the Act. Section 163 (A) reads as follows:

"Special provisions as to payment of compensation on structured formula basis:

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle,

compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be."

The court is bound to calculate the compensation in accordance with the statutory provisions. The learned counsel for the insurance company cited many decisions of the Apex Court wherein the Honourable Supreme Court observed that the second schedule is unscientific and it required modification (see: U.P.State Road Transport Corporation v. Trilok Chandra - ((1996) 4 SCC 362). But, those observations were made when claims are filed under section 166 of the Act. But, section 163 (A) of the Act and the Second Schedule were not declared unconstitutional and still in the statute book and the courts are bound to follow it. It is true that when claims are filed under section 166 of the Act, the court is not bound to follow the structural formula in the second schedule blindly and depending upon the circumstances, variations can be made even though the second schedule is to be followed as a guideline (see: Jyoti Kaul v. State of MP - J.T. 2000 (7) SC 367) and United India Insurance Co. Ltd. v. Patricia Jean Mahajan - JT 2002 (5) SC 74). When parents are the claimants, the court also can consider the age of the parents

while awarding compensation in a claim filed under section 166 of the Act. But, that can be done only in cases when claims are filed under section 166 of the Act. Here, the claim is filed under section 163 (A) of the Act, when claims are filed under section 163 (A) of the Act, the court is bound to award compensation strictly as per the structural formula in the second schedule. Legislation is not the job of judiciary. Section 163 (A) of the Act was not there in the original Act of 1988. It was inserted by Act 54 of 1994. The object of the Legislation of section 163 (A) of the Act is considered by the Apex Court in Oriental Insurance Company Limited v. Hansrajbhai V. Kodala ((2001) 5 SCC 175). The Honourable Apex Court held as follows:

"In this context if we refer to the Review Committee's report, the reason for enacting section 163 (A) is to give earliest relief to the victims of the motor vehicle accidents. The committee observed that determination of cases takes a long time and, therefore, under a system of structural compensation, the compensation that is payable for different classes of cases depending upon the age of the deceased, the monthly income at the time of death, the earning

potential in the case of a minor, loss of income on account of loss of limb etc. can be notified and the affected party can then have option of their accepting lump sum compensation under the scheme of structural compensation or of pursuing his claim through the normal channels..."

Here, the deceased was aged 26. As per second schedule, amount mentioned for a 26 year old victim earning Rs.24,000/- per year in fatal accident (between 25 and 30 years) is Rs.4,08,000/-. After deducting one-third for personal expenses, compensation payable will be Rs.2,72,000/-. Tribunal has awarded only an amount of Rs.67,200/- towards loss of dependency. After deducting this amount, balance payable will be Rs.2,04,800/-. Tribunal has awarded Rs.5,000/- for pain and suffering. It cannot be granted under the second schedule in a case of fatal accident. This Rs.5,000/- has to be deducted. Rs.3,000/- was granted for funeral expenses, but, only Rs.2,000/- can be granted for funeral expenses. Hence, Rs.1,000/- also has to be deducted. Thus, additional amount payable will be Rs.1,98,800/-. The above amount shall be deposited by the first respondent with 7%

interest from the date of application till deposit.

Appeal allowed partly.

J . B . KOSHY
JUDGE

K . P . BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.1582/2001

Judgment

Dated:6th JULY, 2007